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RADIAN TITLE INSURANCE INC.,
formerly known as ENTITLE INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RADIAN TITLE INSURANCE INC.,
formerly known as ENTITLE INSURANCE
COMPANY,

Plaintiff,

v.

FREEDOM MORTGAGE CORPORATION,

Defendant.

CASE NO.:

**RADIAN TITLE INSURANCE INC.'S
VERIFIED COMPLAINT FOR
DECLARATORY RELIEF**

COMES NOW Plaintiff, RADIAN TITLE INSURANCE INC., formerly known as ENTITLE INSURANCE COMPANY, ("Radian"), by and through its attorneys of record, Sue Trazig Cavaco, Esq. of the law firm of Resnick & Louis, P.C., and hereby submits its Verified Complaint and alleges as follows:

PARTIES

1. At all relevant times herein, Radian is a corporation existing under the laws of the State of Ohio, with its principal place of business in Ohio. Radian is, and at all times relevant hereto was, an underwriter of insurance policies eligible to do business as an insurer in the State of Nevada.

11. The Subject Policy issued that same date. A true and correct copy of Policy Number NV-LP 1280 is attached hereto as **Exhibit 2** and is incorporated herein by this reference.

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2 14. The Subject Policy also contains the following Endorsement that
3 states, in pertinent part, as follows:

4 *This endorsement is made a part of the policy and is subject to all of the terms*
5 *and provisions thereof and if any prior endorsements thereto. Except to the*
6 *extent expressly stated, it neither modifies any of the terms and provisions of*
7 *the policy and any prior endorsements, nor does it extend the effective date of*
8 *the policy and any other prior endorsements, nor does it increase the face*
9 *amount thereof.*

10 **The HOA Foreclosure.**

11 15. After Direct ran its customary chain of title search regarding the Property in
12 accordance with industry standards and after the closing of the transaction, on or about April
13 27, 2009, the HOA recorded a Notice of Delinquent Assessment Lien as Instr. No.
14 200905050003295 with the Clark County Recorder's office.

15 16. On or about June 17, 2009 the HOA recorded a Default and Election to Sell
16 the Property. The underlying claimed amount due was \$988.00. The total lien, including
17 penalties was \$2,076.00 as evidence by Instr. No. 200906170001579 as recorded with the
18 Clark County Recorder.

19 17. On or about November 4, 2010 the HOA recorded its Notice of Intent to Sell
20 with the Clark County Recorder as Instr. No. 201011040003362.

21 18. That same date the HOA recorded a Notice of Foreclosure Sale with the Clark
22 County Recorder as Instr. No. 201011040003362.

23 19. Defendant received true and correct copies of the Notice of Sale via certified
24 mail on November 2, 2010 and 8, 2010. True and correct copies of the executed proof of
25 receipt are attached as **Exhibit 3**.

26 20. On or about March 25, 2011 the HOA sold the Property to HR Trust ("HR")
27 at the foreclosure sale for \$6,348.67 as evidenced by the Foreclosure Deed of Trust filed with
28 the Clark County Recorder as Instr. No. 201103250000390.

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1 **Defendant's Foreclosure Litigation**

2 21. On July 12, 2011, four months AFTER the HOA foreclosure sale, the Cooper
3 Castle firm ("CC") filed a Notice of Breach and Default and Election to Sell the Property
4 under Defendant's DOT as evidence by Instr. No. 201107120000587 recorded with the Clark
5 County Recorder's office.

6 22. On August 31, 2011 Defendant commenced an action in this Court (Case No.
7 2:11-cv-01403-MMD-GWF) against HR seeking to quiet title to the Property in its favor
8 ("Foreclosure Litigation").

9 23. In May 2012 both HR and Defendant filed competing motions for summary
10 judgment, each claiming paramount title to the Property.

11 24. On November 28, 2012 the trial Court denied both motions.

12 25. After a bench trial on the merits, Defendant prevailed in that the Court found
13 that HR took title to the Property subject to Defendant's DOT.

14 26. Judgment in favor of Defendant was filed on February 21, 2014. HR appealed.

15 27. The Ninth Circuit, however, disagreed with the Foreclosure Litigation Court's
16 decision and remanded the matter by way of a Circuit Memorandum issued on September 1,
17 2015.

18 28. On or about March 8, 2019, the Foreclosure Litigation Court issued an Order
19 granting judgment for HR on its counterclaims and quieting title to the property in its favor.

20 **Defendant's Untimely Claim Under the Subject Policy for Uncovered Events**

21 29. Four months AFTER the HOA foreclosure, on July 21, 2011 Defendant made
22 a claim under the Subject Policy. A true and correct copy of that correspondence is attached
23 hereto as **Exhibit 4**.

24 30. On September 1, 2011, Radian promptly responded to Defendant's claim.
25 Despite its contentions that the claim was untimely made and for uncovered events, it
26 prudently retained counsel for Defendant under a reservation of rights ("ROR I"). A true and
27 correct copy of that correspondence is attached hereto as **Exhibit 5**.

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1 31. On April 26, 2013, Radian sent a follow-up reservation of rights letter to CC
2 (“ROR II”). Radian was still paying for Defendant’s defense in the Foreclosure Litigation at
3 that time.

4 32. Years later, on September 30, 2015, after Defendant lost the appeal and the
5 Foreclosure Litigation was remanded to the trial Court for continued litigation, Defendant
6 responded again to Radian’s reservation of rights letters. A true and correct copy of this
7 correspondence is attached hereto as **Exhibit 6**.

8 33. Radian answered this letter by way of correspondence dated October 7, 2015.
9 That letter contained a renewed recitation of Radian’s reservation of rights (“ROR III”). A
10 true and correct copy of this correspondence is attached hereto as **Exhibit 7**.

11 34. On March 13, 2019 Radian sent a letter to Defendant giving it notice that
12 Radian was exercising its right to deny coverage and disengage counsel it retained, finding no
13 coverage under the policy and that, even if coverage had existed, the claim was untimely
14 made, causing damage to Radian. A true and correct copy of this correspondence is attached
15 hereto as **Exhibit 8**.

16 35. On March 26, 2019 Defendant’s counsel sent correspondence to Radian
17 disputing Radian’s coverage position. A true and correct copy of that correspondence is
18 attached as **Exhibit 9**. Defendant’s position is based, in part, upon a misunderstanding as to
19 the industry-wide standard as to when underwriting reviews the chain of title prior to issuing
20 a title policy of insurance as well as the policy language excluding liens that attach AFTER
21 the policy issues, such as the HOA lien at issue herein that was created by Nevada statute and
22 thus was perfected at the time that the HOA fees for the property became delinquent for nine
23 months.¹

24 36. Radian thus brings this declaratory relief action seeking this Court’s
25 determination that Radian’s denial of Defendant’s claim is justified and proper.

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27 ¹ The funds loaned by Defendant, and secured by the first DOT against the Property, were used to pay off the
28 purchase money loan, also from Defendant secured by a first Deed of Trust recorded on September 30, 2008
with the Clark County Recorder as Instrument No. 200809300005911 (“Original DOT”). Under the doctrine
of equitable subrogation, Defendant’s DOT takes the position of the Original DOT and thus has priority over
the HOA’s lien.

1 **FIRST CLAIM FOR RELIEF**

2 **Declaratory Relief (No Duty to Defend or Indemnify)**

3 37. Radian incorporates by reference as though fully set forth herein the allegations
4 in all of the preceding paragraphs.

5 38. Radian contends that an actual controversy regarding the parties' rights and
6 obligations under the Subject Policy exists.

7 39. Radian thus seeks a declaration from this Court confirming that, pursuant to
8 the terms, conditions, exclusions and endorsements of the Subject Policy, that Radian did not
9 have a duty to defend Defendant in the Foreclosure Litigation or to indemnify Defendant for
10 any alleged losses related thereto. Specifically, Radian lost its ability to pay the minimal
11 amount of the HOA super-priority lien and to prevent the HOA foreclosure sale in lieu of
12 funding extended litigation. Importantly, Defendant filed the Foreclosure Litigation four
13 months after the HOA foreclosure sale. Had Defendant provided Radian notice of the HOA
14 lien prior to the HOA foreclosure sale, Defendant would have had the ability to foreclose upon
15 its priority DOT before the super-priority portion of the HOA's lien pre-empted Defendant's
16 DOT's priority under Nevada statute. See, ROR I – III.

17 40. Radian has been required to retain the law firm of Resnick & Louis, P.C. to
18 prosecute this action and is, therefore, entitled to all reasonable attorney's fees and costs of
19 suit.

20 **SECOND CLAIM FOR RELIEF**

21 **Declaratory Relief (No Coverage for Alleged Losses)**

22 41. Radian incorporates by reference as though fully set forth herein the allegations
23 in all of the preceding paragraphs.

24 42. Radian contends that an actual controversy regarding the parties' rights and
25 obligations under the Subject Policy exists.

26 43. Radian thus seeks a declaration from this Court confirming that, pursuant to
27 the terms, conditions, exclusions and endorsements of the Subject Policy, that Radian does
28 not have a duty to pay Defendant for any losses it claims under the Subject Policy related to

1 the Foreclosure Litigation or its DOT's loss of priority regarding the Property. Specifically,
 2 Radian lost its ability to pay the minimal amount of the HOA super-priority lien and to prevent
 3 the HOA foreclosure sale in lieu of funding extended litigation. Importantly, Defendant filed
 4 the Foreclosure Litigation four months after the HOA foreclosure sale. Had Defendant
 5 provided Radian notice of the HOA lien prior to the HOA foreclosure sale, Defendant would
 6 have had the ability to foreclose upon its priority DOT before the super-priority portion of the
 7 HOA's lien pre-empted Defendant's DOT's priority under Nevada statute. See, ROR I –
 8 III.

9 44. Radian has been required to retain the law firm of Resnick & Louis, P.C. to
 10 prosecute this action and is, therefore, entitled to all reasonable attorney's fees and costs of
 11 suit.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Radian prays for judgment against the Defendant as follows:

- 14 1. For a declaration and determination that Radian does not owe a duty to defend or
 15 indemnify Defendant related to the Foreclosure Litigation because there is no
 16 coverage under the policy and the Defendant's claim was untimely, causing
 17 prejudice to Radian;
- 18 2. For a declaration and determination that Radian does not have a duty to pay
 19 Defendant for any losses it claims under the Subject Policy related to the
 20 Foreclosure Litigation or its DOT's loss of priority regarding the Property because
 21 there is no coverage under the policy and the Defendant's claim was untimely,
 22 causing prejudice to Radian as detailed herein;
- 23 3. For an award of reasonably incurred costs of suit and attorney fees, as are allowable
 24 under applicable law; and

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1 4. For all other relief the Court deems just and proper.

2 **DATED** this 25th day of June, 2019.

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4 **RESNICK & LOUIS, P.C.**

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6 */s/ Sue Trazig Cavaco, Esq.*

7 By: _____

Sue Trazig Cavaco

Nevada Bar No. 6150

8925 W. Russell Road, Suite 220

Las Vegas, NV 89148

Attorneys for Plaintiff,

10 *RADIAN TITLE INSURANCE, formerly known*
11 *as ENTITLE INSURANCE COMPANY*


VERIFICATION

STATE OF Ohio)
COUNTY OF Cuyahoga)

I, Lee Baskey, do here by verify that I am the Person Most Knowledgeable for Radian Title Insurance, Inc., that I have read the foregoing Verified Complaint For Declaratory Relief, and the statements contained therein are to the best of my knowledge, information, and belief, true and correct.


Lee Baskey
Radian Title Insurance, Inc.

SUBSCRIBED and SWORN to before
me this 25 day of June, 2019.

 DAVID J. KILLMER
NOTARY PUBLIC in and for said County OF MEDINA.
Comm EXPIRES: MAY 7, 2021